IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO.844 (MS) OF 2006

U.P.S.R.T.C. (now know as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Jagdish Chandra, S/o late Sri Kishan Ram, R/o Village Talla Gaithia, Post Gaitia Sanitarium, District Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani Nainital. .....Respondents.

&

WRIT PETITION NO.845 (MS) OF 2006

U.P.S.R.T.C. (now know as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Keshav Dutt Kandpal, S/o Bhawani Dutt Kandpal, R/o Indira Nagar 11, P.O. Lal Kuan, Tehsil Haldwani, District Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani Nainital. .....Respondents.

&

WRIT PETITION NO.846 (MS) OF 2006

U.P.S.R.T.C. (now know as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Chandra Shekhar Gunwant, S/o late Bhola Datt Gunwant, R/o Gunwant Niketan, Subhash Nagar, P.O. Haldwani, District Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani Nainital. .....Respondents.

&

WRIT PETITION NO.847 (MS) OF 2006

U.P.S.R.T.C. (now know as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Basant Lal, S/o late Ram Lal, R/o Malla Byura, P.O. Kathgodam, Haldwani, District Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani Nainital. .....Respondents.

&

WRIT PETITION NO. 848 (MS) OF 2006

U.P.S.R.T.C. (now know as)

Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Kishan Singh, S/o late Bhagwat Singh, R/o Shish Mahal, Colonel Ward, P.O. Kathgodam, Tehsil Haldwani, District Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani Nainital. .....Respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri A.N. Sharma and Sri C.K. Sharma, Advocate for the petitioner and Standing counsel for the respondent no.2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated (Annexure No.4 to the writ petition).

Briefly stated, respondent/workman has filed a claim petition under Section 33 (c) (2) of the Industrial Disputes Act before the Presiding Officer, Labour Court, Haldwani claiming difference of leave encashment arrears arising out of recommendation of 5th Pay Commission. The claim of the respondent/workman was opposed by the U.P.S.R.T.C. by filing a written statement.

The Labour Court on different dates allowed the claim of the respondent/workman. The aforesaid order passed by the labour Court was challenged before this Hon'ble Court in writ petitions. In writ petitions following directions were given:-

"Learned counsel for the petitioner has submitted that according to the direction of the government order dated 24th February, 1999, the fixation of the salary of the employees of

the petitioner corporation has been determined by the petitioner corporation but the payment thereof since 01.01.1996 to 31.12.1998 has not been made so far, but as soon as the financial position of the petitioner corporation improves or it receives financial assistance from the State Government and direction regarding carving out the plan for the payment thereof, the same shall be made accordingly. The salary as revised according to the implementation of recommendation of the Vth Pay Commission is being paid to the employees of the petitioner corporation since 01.01.1999. In spite of the acute financial crisis the petitioner corporation is making payment according to a plan carved out vide its resolution No. 2553/99 and thereafter issued vide Head Quarters Circular No. 186 CENT/G/99/592 Nigam/97, dated 05.03.1999.

It has further been submitted that the Dehradun region of the petitioner corporation has already paid a sum of Rs. 2, 13, 86,675.00 to its employees.

Both the parties have agreed that in view of the above, they will consider to clear all the dues by passing the appropriate order for the payment with effect from 1st January, 1996 as per Govt. Order dated 24.02.1999, which was adopted by the policy decision of the U.P.S.R.T.C."

In pursuance of the aforesaid order, labour Court has considered the maintainability of the application under Section 33 (c) (2) of the Industrial Dispute Act in favour of the workman. However, in Misc. Case No. 142 of 2002, the Presiding Officer labour Court has passed the order to the following effect:-

"श्रमिक द्वारा अपने प्रार्थना पत्र में अवशेष वेतन एरियर रू0 29088/– अर्जित अवकाश का नगदीकरण 28529/– तथा अतिकाल भत्ता रू0 75/– कुल रूपया 57692/–की मांग की गई है जिसमें से वाद के विचाराधीन रहते हुए

श्रमिक द्वारा रू0 4953/– प्राप्त होना स्वीकार किया गया है, जबकि सेवायोजक साक्षी के अनुसार श्रमिक का जनवरी व फरवरी 99 का एरियर भुगतान किया जाना कहा गया है और भुगतान रजिस्टर मूल रूप से न्यायालय में प्रस्तुत किया जायेगा कहा गया है किन्तु वह प्रस्तुत नही किया गया। शेष वाद पत्र के कम 3,4,5,6,7 का भुगतान हो जाना कहा गया है जो श्रमिक को भी स्वीकार है। इस प्रकार श्रमिक को वेतन एरियर के रूप में रू0 28529/– तथा अतिकाल भत्ते के रूप में रू0 75/– कुल रूपया 52839/–की मांग संगणना हेतु स्वीकार की जाती है। सेवायोजकों को यह अधिकार होगा कि यदि उनके द्वारा सम्बन्धित श्रमिक को माह जनवरी व फरवरी 99 का एरियर रू0 1868/– वास्तव में श्रमिक को भुगतान कर दिया गया है, तो वह उसका समायोजन संगणित धनराशि का भुगतान दो माह के अन्दर करे, अन्यथा श्रमिक आदेश की तिथि से देय धनराशि पर भविष्य में 6 प्रतिशत ब्याज भी प्राप्त करने का अधिकारी होगा। तद्नुसार वादी को देय धनराशि की संगणना की जाती है।"

Counsel for the petitioner has referred the judgment of Apex Court passed in Special Leave to Appeal No. 2229 of 2006, where the similar controversy arose and the following order was passed:-

"Delay condoned.

Issue notice.

There shall be interim stay."

In view of the aforesaid, the order passed by the Chairman Labour Court shall be compiled with by depositing half of the amount and the same shall be paid to the workman after the satisfaction of the Presiding Officer in two instalments on duration of two months. The rest of the half shall be subject to the final decision in Special Leave to Appeal.

The presiding Officer shall fix the date after the decision of the apex Court if the Government Order dated 24.02.1999 in respect of the liability to pay the amount from 01.01.1996

has been challenged in S.L.P. Failing which, liberty is given to the respondent to fix the instalment so as to enable the petitioner to pay the same.

Subject to the aforesaid, writ petitions are disposed of. No order as to costs.

(Rajesh Tandon, J.)

06.07.2006
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